

S.B.Civil Writ Petition NO.5346/2004**Madho Singh & Ors.****vs****The Board of Revenue & Ors.****DATE OF ORDER : - 8.2.2005****HON'BLE MR. PRAKASH TATIA,J.**

Mr. J.R.Beniwal, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order of the Board of Revenue dated 31st Oct., 2003 by which the Board of Revenue allowed the appeals preferred by the respondents private parties and set aside the orders passed by the court of Asstt. Collector-cum-District Magistrate (H.Q.), Jodhpur on 9th July, 1998 and the appellate order dated 11th June, 1999 by which the appeal of the non-petitioners was dismissed by the appellate court.

Brief facts of the case are that the plaintiffs filed a suit for injunction under Sections 188 and 183 of the Rajasthan Tenancy Act claiming themselves to be the Khatedar tenant of the land in dispute. The defendant submitted an application under Order 7 Rule 11 CPC raising objection, namely that the land in question is Abadi land, therefore, the revenue court has no jurisdiction to hear and decide the suit filed by the plaintiffs. The learned Asstt. Collector observed that the plaintiffs are already in possession of the land of Khasra no.1583/9

and filed the suit for land of Khasra no.1583/9 and in the garb of this suit, the plaintiff wants to take possession of land of Khasra no.1583/10, which is Abadi land. After holding so, the learned Asstt. Collector held that in view of the above, no cause of action accrues to the plaintiff with respect to the land of Khasra no.1583/9. The trial court allowed the application filed under Order 7 Rule 11 CPC and rejected the plaint of the plaintiffs. The said order was upheld by the Revenue Appellate Authority, Jodhpur vide order dated 11th June, 1999.

The Board of Revenue set aside both the orders in the appeal preferred by the plaintiffs. The Board of Revenue observed that when plaintiffs came with a specific case that land in question is their Khatedari land then the courts below should not have called the Commissioner's report for the purpose of deciding the application under Order 7 Rule 11 CPC. The Board of Revenue also observed that the dispute, which was raised by the defendant is about the nature of the land to contest the claim of the plaintiffs and the matter should not have been decided by the trial court without permitting both the parties to lead their evidence.

I perused the reasons given in the orders passed by the court of Asstt. Collector as well as by the court of Revenue Appellate Authority-Second, Jodhpur. A bare perusal of all these orders clearly reveal that

the courts exceeded their jurisdiction and rejected the plaintiffs' suit under Order 7 Rule 11 CPC by accepting the defence of the defendant. The courts below have not only instead of deciding the defendant's application under Order 7 Rule 11 CPC by looking at the pleadings and the documents annexed with the plaint decided the objection of the defendants on the basis of mere assumptions by observing that the plaintiffs have filed the suit for a particular land with intention to grab some other land etc. It is settled law that while deciding the application under Order 7 Rule 11 CPC, no defence can be looked into.

In view of the above, the learned Board of Revenue rightly set aside the order passed by the Asstt. Collector, Jodhpur dated 9th July, 1998 and the order passed by the Revenue Appellate Tribunal dated 11th June, 1999.

Hence, the writ petition of the petitioner is dismissed. However, the Asstt. Collector is requested to decide the suit preferably within one year from today as learned counsel for the petitioner submits that the suit is old one.

(Prakash Tatia), J.

c.p.goyal/-